



# International Acquisition

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# **Specialty Metals - DFARS Case 2007-D013, Waiver of Specialty Metals Restriction for Acquisition of Commercially Available Off-the-Shelf Items**

- ▶ **Type: Final rule published 11/8/2007**
- ▶ **Source: Section 35 of the OFPP Act (41 U.S.C. 431)**
  - **Section 35 of the OFPP Act requires that FAR (DFARS) list the statutes that are inapplicable to acquisition of COTS items.**
  - **Covered statutes (as determined by OFPP) must be included on the list unless Administrator of OFPP determines that waiver of the statute for acquisitions of COTS items would not be in the best interest of the United States.**
- ▶ **Synopsis of rule:**
  - **Creates list on laws inapplicable to acquisition of COTS items at DFARS 212.570.**
  - **Adds 10 U.S.C. 2533b to the list.**



# **Specialty Metals - Class Deviation 2007-00011, Waiver of Specialty Metals Restriction for Acquisition of Commercially Available Off-the-Shelf Items**

## **▶ Type: Class Deviation**

## **▶ Synopsis:**

- OFPP waiver and final rule under 2007-D013 was implemented through class deviation, October 26, 2007.**
- Revision of Class Deviation 2006-00004 to add exception for acquisition of COTS items (end products or components) and a few other minor corrections:**
  - End product**
  - Date associated with one-time waivers**



## Specialty Metals – National Defense Authorization Act for FY 2008

- ▶ **Type: New Class Deviation, Interim rule, Proposed rule (definitions).**
- ▶ There are limitations on exception for COTS items
  - Restrictions on application to specialty metals raw stock, forgings, castings, high performance magnets, fasteners.
- ▶ **Provides market basket approach for fasteners that are commercial items.**
- ▶ **New definition of “required form” and other requirements for DNADs.**
- ▶ **Exempts all electronic components.**
- ▶ **Provides 2 percent de minimus exception.**
- ▶ **Streamlined compliance for Commercial Derivative Military Articles**
- ▶ **National security waiver**







# **Berry Amendment—DFARS Case 2006-D006, Berry Amendment Notification Requirement**

- ▶ **Type:** Interim rule was published in 10/4/2006 (1 response - strongly support)

**Final rule published 8/2/2007.**

- ▶ **Source:** National Defense Authorization Act for FY 2006, Sec 833(a).

- ▶ **Synopsis of rule:**

- **Requires posting of notice on FedBizOpps, within 7 days after award of a contract that exceeds the simplified acquisition threshold, when acquiring—**
  - **Clothing, tents, tarpaulins, covers, various covered fibers and fabrics, or items of individual equipment containing such fibers or fabrics—**  
**If the Secretary of Defense or of the military department concerned determines that satisfactory quality and sufficient quantity of domestic items cannot be procured as and when needed at United States market prices (domestic nonavailability determination).**
  - **Chemical Warfare protective clothing—**  
**If such procurement is necessary in furtherance of agreements with foreign governments (qualifying countries).**



## **Berry Amendment—DFARS Case 2006-D031, Berry Amendment—Clothing Materials and Components Covered**

- ▶ **Type:** Interim rule was published in 1/22/2007 (No comments)  
Final rule published 8/2/2007.
- ▶ **Source:** National Defense Authorization Act for FY 2006, Sec 833(b).
- ▶ **Synopsis of DFARS rule:**
  - **Expands the restriction on clothing to include clothing materials and components.**
  - **Does not cover sensors, electronics, or other items added to, and not normally associated with, clothing.**
- ▶ **PGI:**
  - **Provides examples of Federal Supply classes that contain items of clothing and items that are not clothing.**
  - **SAPI Plates are not clothing, but fabrics used in SAPI plates may still be covered.**



## **Berry Amendment—PGI Case 0000-P070 and -P071: Reciprocity of Domestic Nonavailability Determinations**

- ▶ **Type: PGI**
- ▶ **Source: OSD**
- ▶ **Synopsis of PGI 0000-0070:**
  - **Class DNADs may be used by USD(AT&L) or the Secretary of a military department, provided the same rationale applies and similar circumstances are involved.**
  - **Before relying on an existing DNAD, contact the approving office.**
  - **DNADs approved by (USDAT&L) that are currently available for reciprocal use are listed at [http://www.acq.osd.mil/dpap/cpic/ic/domestic\\_non-availability\\_determinations\\_dnads.html](http://www.acq.osd.mil/dpap/cpic/ic/domestic_non-availability_determinations_dnads.html) .**
- ▶ **Synopsis of PGI 0000-0071:**
  - **If application outside the approving military department is appropriate, the approving department shall provide a copy of the DNAD to DPAP/CPIC.**



## **Case Title: Prohibition on Acquisition from Communist Chinese Military Companies**

**(DEARS Case 2006-D007)**

- ▶ **Type:** Interim rule published 9/8/2006 (1 response)  
Final rule - 3/27/2007
- ▶ **Source:** Section 1211 of the National Defense Authorization Act for  
FY 2006 (Pub. L. 109-163).
- ▶ **Synopsis of rule:**
  - **Prohibits DoD from acquiring U.S. Munitions List items from Communist Chinese military companies.**
  - **Does not apply to components and parts of covered items unless the components and parts are themselves covered by the U.S. Munitions List.**
  - **Exceptions: Supplies or services acquired—**  
In connection with a visit to the People's Republic of China by a vessel or an aircraft of the U.S. armed forces;  
for testing purposes; or for the purposes of gathering intelligence.







## **Case Title: Restriction on Carbon, Alloy, and Armor Steel Plate (DFARS Case 2005-D002)**

- ▶ **Type:** Proposed rule published 12/9/2005 (2 responses - 1 supported, other raised issues. After close of comment period - received letter signed by 10 members of Congress, expressing concern.)  
Final rule published & effective 12/19/2006
- ▶ **Source:** Section 8111 of FY 1992 DoD Appropriations Act (Pub. L. 102-172) and similar sections in subsequent appropriations acts.
- ▶ **Synopsis:**
  - Annual DoD appropriations acts restrict the acquisition of carbon, alloy, or armor steel plate , that is not melted and rolled in the U.S. or Canada.
  - Applies when the steel plate is for use in any Government-owned facility or property under the control of DoD.
  - Trying to clarify inconsistent wording.
  - Raised old issue, as to meaning of “property under the control of DoD.”



## **Case Title: Reporting of Purchases from Overseas Sources (FAR Case 2005-034 and PGI Case 0000-P068)**

- ▶ **Type: Interim rule published 9/28/2006 (1 response to the proposed rule - did not suggest any change to the rule)  
Final rule published 8/17/2007**
- ▶ **Source: 41 U.S.C. 10a (as amended by Section 8306 of Pub. L. 110-28), and several prior consolidated appropriations acts.**
  - Each Federal agency must report to Congress - dollar value of acquisitions of supplies that are manufactured outside the U.S. (no component test)
  - Itemized list of all waivers granted with respect to such supplies under the Buy American Act.
  - Summary of total procurement funds spent on goods manufactured in the U.S.
- ▶ **Synopsis of rule: Add a solicitation provision, when acquiring manufactured end products, to collect data from offeror on whether end products manufactured predominantly in the U.S. or outside the U.S.**
- ▶ **FPDS requirements:**
  - Modify FPDS to collect data on whether end products manufactured in the U.S. or outside the U.S. and, if outside the U.S., reason for such acquisition.
  - Instruction to contracting officer.
  - Provide uniform report format for use by all agencies.